Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNDL-S, MNRL, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for damage or compensation under the Act; a monetary order for damages for the Landlord, retaining the security deposit to apply to the claim; for a monetary order for rent and/or utilities; and to recover the $100.00 cost of their Application filing fee.

The Tenants, C.E. and J.S., and two agents for the Landlord, H.Y. and M.Y. (the "Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenants and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

The Landlord submitted a copy of an enduring Power of Attorney appointing her daughter, H.Y., as her Attorney "…to do anything that I may lawfully do by an agent."

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on August 1, 2017, with a monthly rent of $2,500.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of $1,250.00, and a pet damage deposit of $400.00.

The Parties agreed that the tenancy began when the Tenants sublet the rental unit from the previous tenant. The Tenants submitted copies of texts in which they and the Agent, M.Y., corresponded about this sublease and the original tenant.

The Parties agreed that the tenancy ended, because the Landlord served the Tenants with a Two Month Notice for End of Tenancy for Landlord's Use dated March 26, 2019, with an effective vacancy date of May 31, 2019 ("Two Month Notice").

The Tenants submitted a copy of a condition inspection report ("CIR") for the move-in inspection dated July 23, 2017, and signed by both Parties. The Landlord submitted a copy of a move-out CIR dated May 19, 2019, which was not signed by the Tenants on move-out. The CIR had the Tenants forwarding address. The Tenant applied for dispute resolution on June 3, 2019.

The Tenant said that the move-in CIR was done with the Agent, M.Y., three months after they moved in. The Tenant said the following about the move-in condition inspection:

> In the [CIR] with [M.Y.] present, we didn't even go into the rooms. He wasn't even concerned about doing the [CIR] and I tried to do the best I could. We had already lived there for three months when that was done with him. These things were already covered up by our furniture and our belongings. 'Tenant washer' was all I could get in there. I did it the best I could, we didn't even go into the rooms.

The Agents did not deny the Tenant's testimony in this regard.

The Tenants said that the previous tenant downstairs had been living there for eight years, and she sublet the rental unit to the Tenants for a damage deposit. Both Parties agreed that the previous tenant went behind both of their backs in subletting the basement suite, and presenting herself as the landlord to the Tenants.

The Agents said the Tenants left significant damage in the rental unit, for which the Landlord seeks compensation. The Landlord submitted a monetary order worksheet ("MOW") and an amended MOW, that states the following:

	Receipt/Estimate From	For	Amount
1	Various	Fixing walls & painting	$5,132.63
2	Various	Carpet cleaning & Replacement	$4,566.26
3	Various	Replace washing machine & clean stove	$772.40
4	Various	Fix various damage	$290.00
5	Various	Replace light bulbs & fixtures	$215.36
6	Various	Replace damaged items	$874.64
7	Various	Replace locks & keys	$110.37
8	Various	Restore gardens, remove garbage	$1,459.50
9	Rent owed	19 Days	$1,561.64
10	Various	Sewer "emergency"	$307.12
		Total monetary order claim	$15,289.92

#1 FIXING WALLS AND PAINTING - $5,132.63

In the hearing, the Agents said that the Tenants left the rental unit damaged. The Agents said: "We had two decorators come in to assess the damage. There were 163 holes in the walls; this went beyond regular wear and tear."

The Agents said that prior to this tenancy, the rental unit had been painted in 2015.

The Agents said that prior to moving in, the Tenants bought and used paint colours that

were not approved by the Landlord. The Agents submitted photographs of the rental unit prior to the tenancy, with the walls painted white, and photographs at the end of the tenancy with rooms painted green, yellow, brown/grey, and dark purple. One of the pictures shows a window sill with black or dark purple paint on it.

The Agents said they obtained estimates from a painting company and the estimates came in higher than they have claimed: $9,954.00 and $7,056.00. The Agent, H.Y., said: “We bought paint and it has taken my brother 120 hours of painting, if not more.” She explained that they were able to keep track of his hours with the security system, which turns on and off when people go in and out of the house. The Agent said that her brother worked on the residential property “…every evening for the last 3½ months. That’s probably understated.” She said they billed $35.00 per hour, which she said is a low price.”

The Landlord submitted receipts from a national hardware store identified as “wall & paint supplies” that adds up to $775.86.

The Landlord submitted photographs of what they called “damaged walls”.

The Tenants stated that they painted the rental unit walls and that the Agent, M.Y., “…was coming by and never said anything about it.” They said the move-in CIR was completed at the end of July 2017, and the Agents never mentioned in the CIR that the Tenants were responsible for painting the rental unit back to white. The Tenants argued that the Act does not require tenants to paint a rental unit at the end of a tenancy.

As for the damage to the walls, the Tenants said it is nothing more than reasonable wear and tear. They said most of the Landlord’s evidence is of enlarged photographs of nail holes.

The Tenants’ said that the hole in the stairway was there when they moved in. Their photo shows a cable in the hole going upstairs, which they said they never used. The Tenants said they took photographs on May 19, 2019, and their photo shows a black cord coming out of the hole, but in the Landlord’s photograph, the cord has been removed. The Tenants argue that this points out that the hole was not done by them. One of the previous tenants did that in order to use the cable years ago.

#2 CARPET CLEANING AND REPLACEMENT - $4,566.26

The Agents said that the carpets in the rental unit were new in 2014, when a renovation

was done, following a sewer having been dug up in the front of the house. They said that in December 2016, a flood required them to install new carpets downstairs. They said: “The whole basement was completely redone - finished by March 2017. It was a $65,000 reno in just the basement, which was covered by insurance.”

The Landlord submitted photographs of what the Agents referred to as cigarette burns in the carpet that were not there when the Tenants moved in. The Agents also noted that these were not marked down on the move-in CIR. The Landlord said that the Tenants submitted a CIR that they did with previous renter and the cigarette burns were not noted in that CIR.

The Agents said there are photographs of carpets that were damaged with paint specs in one of the bedrooms. They said they did not claim all of the damage, but they did for the cigarette burns on the carpet in a couple of bedrooms. They said: “The front bedroom particularly.”

They directed my attention to a photograph on page 19 of their submissions, which shows burns in the carpet in an upstairs front bedroom. They also said that the hallway, the living room, and dining room have dirty carpets and that they are not going to clean them.

The Agents said that the linoleum in the kitchen is gouged next to the refrigerator. They pointed to photographs in pages 25 and 26.

The Tenants pointed to their photographs on page 96 of their submissions which shows a carpet cleaning van, which they say demonstrates that they had the carpets cleaned before they left. They also submitted a receipt on page 53, which indicates the cost of the carpet cleaning.

The Tenants said that they did not have the carpets cleaned in the living room or dining room, because of an RTB Order for the carpets to be replaced. The Tenants submitted a copy of the Order at page 35 of their Appendix B. This Order dated May 7, 2018 states:

> The tenant’s application for an Order compelling the landlord to perform repairs under Section 62(3) of the Act is granted and the landlord is ordered to replace the living room and dining room carpets, to repair the bathroom and to clean the furnace ducts, all within one month of service of an Order.

The Tenants also submitted an RTB decision dated March 7, 2019, in which the Landlords are ordered to arrange for the carpet to be replaced by the end of March 2019, in compliance with the previous order.

The Tenants said that the gouge in the floor by the refrigerator was done when the Landlord replaced the existing black refrigerator with a used white refrigerator. They said that the person replacing the refrigerator who was hired by the Landlord damaged the floor.

#3 REPLACE WASHING MACHINE - $772.90

The Agents said that the Tenants moved the Landlord's washing machine outside and left it there for the duration of the tenancy. The Agents said the Tenants did not return the machine to where they found it at the start of the tenancy, and that the machine no longer works, because it sat outside for 18 months. The Agents also said the Landlord never authorized the Tenants to move the washing machine.

The Agents said they looked for a replacement of a similar washing machine that is about five or six years old. The Tenants submitted a copy of the CIR. They noted that in the "Utility Room" category, someone hand wrote "tenant washer" beside the spot for "Washer/Dryer".

The Tenants said: "[Agent, M.Y.] knew that his washing machine was not being used. We got a washer from [Tenant J.S.'s] father, who passed away.

The Tenants pointed to page 27 of their Appendix A, which contains the following text ["she" in the texts refers to the previous tenant.]

Tenants:

> June 12, 2017,
> I went downstairs to do laundry and the washer is leaking water on the floor and the dryer was pulled out and detached from the wall. [J.S.] is reattaching the dryer hose, etc. So that's fine for now. I took pictures of it before we moved it back.
>
> The washer is running weak and not sure what's wrong with it.

Agent:

> Ok, do you think the damage was on purpose? And is she moved out?

Was it leaking before?

Tenant:

I'm not too sure. But her place is empty from what I saw in the truck. She is back at the moment and sounds like she's vacuuming. It was not leaking last time I did laundry last weekend.

Agent:

Ok
Let me know if the washer still leaks next time you do laundry, maybe the hose is leaking; if not it will be replaced.

The Tenants said in the hearing:

The washer was damaged and leaking on the floor, so when the opportunity of a replacement came along, [M.Y.] said he didn't care what we did with the washer. We offered to move it for him, as we had a van and he didn't. [J.S.] wrapped it up in plastic and eventually moved it into the boat shed. Where [M.Y.] keeps his boat.

The Tenants pointed to their picture of the Landlord's washing machine, with the dryer in front. They said: "It's not a brand-new machine; therefore, her estimate for $700.00 for a machine is ridiculous - that is not replacing like with like. At best it's a $50.00 machine."

The Landlord submitted photographs showing an empty space where the washer and dryer were initially stored in the utility room. They also submitted a photograph of the washer stored somewhere else with other items on top of it.

The Agents said: "A washing machine thrown in the back, thrown into the boat shed. There's no consent. It says: 'tenant's washer' [on the CIR], but that doesn't mean ours wasn't there too."

#4 FIX VARIOUS DAMAGE - $290.00

The Landlord testified that a number of items were broken during this tenancy. These included:

- a broken tile in the kitchen back splash,
- a leaded glass door in the front bedroom,

- a kitchen drawer,
- missing baseboards, and
- a towel rack.

The Landlord said that they have not fixed all of the items yet. She said that the tile in the kitchen back splash is difficult to repair. The Landlord said the kitchen was redone about four years ago in 2015, before the Tenants moved in. She said the entire upstairs was redone then.

The Landlord said she claimed $100.00 for the broken glass in the bedroom glass door, although that has not been fixed yet. She said:

> That's an original feature of the house; it has a particular value. It's not just a glass door, but a leaded glass door that is quite intricate. It's cumbersome to replace and has to be done by a professional. I haven't gone to check on the cost – I put a $100.00 for glass and craftmanship, because of the leaded bits. All of our estimates are conservative. We haven't fixed the details.

The Landlord also said that there is a damaged kitchen drawer, and she directed my attention to photographs. She also said that the baseboards were removed and those needed to be fixed and that a towel rack in the bathroom is damaged.

The Tenant said that the kitchen tile was damaged when they moved in. "It was obviously done when the electrical work was done, not something we did. It's above the counter – whoever installed the electrical did the damage."

The Tenant said that she is not sure what happened to the glass door. She said: "I don't recall seeing that. I was surprised to see that in their photos. Could have been there since we moved in. That's my bedroom and I always had that blind down. It wasn't used. We left that door closed. We had a bedroom chair against it."

As for the kitchen drawer, the Tenant said it was that way when they moved in: "We had to put a piece of tape there, because it wouldn't stay open – there's a piece of tape there - but when the drawer is closed you can't see it."

The Tenant said that there were no baseboards before they moved in – just white walls. They referred to photographs they took of the rental unit prior to the tenancy. These photographs show walls without baseboards. She said: "The whole house never had

any baseboards. The baseboard in the Landlord's photos – [Tenant J.S.] had salvaged that and was going to install that, but he never completed that project."

The Tenant said the towel rack was not damaged and she pointed to a photograph of a towel hanging on it on the day they did the move-out inspection, demonstrating that it was not damaged.

The Landlord spoke of the move-in CIR, saying it does not say anything about a broken glass door or broken tile. The Landlord said the Tenants had an inspection report with previous tenant and in there's nothing about this on that CIR. The Landlord said: "These are quite noticeable things. It's a little surprising to me. It was obviously not covered [in the CIR]."

#5 REPLACE LIGHTBULBS AND FIXTURES - $215.36

In the hearing, the Agent said that the lightbulbs were all missing from the rental unit. She said that a rental unit has bulbs at the start of the tenancy and that it is the responsibility of the tenant to replace them, as they burn out. The Agent also said that there were fixtures missing and that she has been conservative in estimating the cost of replacing them.

The Agent also said that "almost every electrical plate was missing and taken out of the house. Appendix E has pictures of all of them. She said they had 3 halogen bulbs, which are missing and six regular bulbs, four light fixtures and four electrical switch covers missing."

The Landlord said there were halogen bulbs taken out of a light fixture, in addition to six other regular bulbs missing from around the rental unit. The Tenants said that the halogen bulbs were not taken out of the light fixture to spite the Landlord, but because they had purchased expensive, energy saving lightbulbs, which they took with them when they left. However, they did not indicate what they did with the Landlord's original halogen bulbs that they replaced in the fixture. They also said that if the bulbs in the kitchen were not working, it was because they had burned out. The Tenants said that the Landlords "have highly exaggerated that we took all the lightbulbs. There were only three indoor and two outdoor lightbulbs removed. Also, we had purchased the outside light above the basement entrance with no cost to the Landlord."

The Tenants said that the light fixtures were never there in the first place, other than the fixture with the halogen bulbs, as evidenced by their photographs taken prior to the

tenancy of the bedrooms, hallway, entry way and downstairs living room. The Tenants said: “All the rooms and hallways just had the bare bulbs exposed.” The Tenants said that they did not remove any light fixtures or electrical covers from the rental unit prior to moving out.

The Landlord submitted a written breakdown of what they estimate to be the cost of replacing the lightbulbs, light fixtures, and electrical covers. It is unclear why the Landlord would use an estimate, rather than providing receipts from having purchased replacement items to establish the value of these items. The Landlord said that the items may be replaced for the following amounts:

- 3 halogen bulbs $18.00
- 6 regular bulbs $27.00
- 4 light fixtures @ $35.00 each = $140.00
- 4 electrical covers @ $7.59 each = $30.36

These items total the $215.36 claimed for this category.

#6 REPLACE DAMAGED ITEMS - $874.64

The Landlord specified the items claimed in this category in their documentary evidence as follows:

- Venetian blind damaged $140.00
- Bathtub chip $500.00
- Missing showerheads 2 x $ 87.32 = $174.64
- Missing drape panels 2 x $ 30.00 = $ 60.00

These items total the $874.64 claimed for this category. Again, the Landlord estimated the cost of replacing these items. The Landlord submitted a receipt from a national hardware store with the cost of a showerhead and an electrical cover written down on the receipt, but there is no evidence that the Landlord purchased these items at the time or subsequently.

The Tenants said that these items were in this condition when they started their tenancy; they said they are not responsible for these repairs/replacements. They said some of the electrical outlets had covers and some did not. They submitted photographs demonstrating this dated July 2017 before they moved in.

Two of the Tenants' photographs from the outside of the residential property dated May 15, 2017, show a downstairs window with a damaged venetian blind, which the Tenants say demonstrates that this was damaged before their tenancy began.

The Tenants submitted a photograph of the master bedroom after they had moved their furniture out. I note that the room is painted a colour rather than white. I find this demonstrates that the photograph was taken at the end, not the start of the tenancy.

There are two drapery panels in this room in which the Agent said one was missing, and which shows a pattern in the carpet from carpet cleaning. The Tenants also submitted a photograph of another bedroom in which they noted that there was only one drapery panel, as they said was the case when they moved in.

#7 REPLACE LOCKS & KEYS - $110.37

The Agent said that the Tenants only returned one key for the basement door; therefore, all four door locks needed to be replaced. The Landlord submitted a receipt for this purchase. The Tenants said they left their keys on the kitchen counter.

#8 RESTORE GARDENS, REMOVE GARBAGE - $1,459.50

The Agents said that the Tenants changed the residential property landscaping by obtaining and arranging boulders on the property and not removing them at the end of the tenancy. The Agents said that the Tenants made changes to the front lawn and did not return it to its original state before they moved out.

The Agents also said that the Tenants left garbage and pet waste around the property, which they say the Tenants should have cleaned up before they left.

The Agents submitted a receipt for garbage removal and landscaping work from a local company for $525.00. The Agents said this work restored the garden to its pre-Tenant state. This receipt states:

- Remove garbage and dump - $375.00
- Mow lawn, clean overgrown shrubs - $150.00

The Tenants said that the previous tenant left the garbage on the property from her eight years there. The Tenants said they should not have to pay to clean up after a

previous tenant. They also said that the Agent, M.Y., said they could do the landscaping work.

#9 19 DAYS RENT OWING - $1,561.64

The Landlord claimed that the Tenants did not pay rent in May 2019, the last month of the tenancy. The Agents said the Tenants were given the Two Month Notice pursuant to section 49 of the Act. This Notice gave the Tenants until May 31, 2019 to move out. Section 51 of the Act provides that a tenant who receives a Two Month Notice "…is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement."

The Agents said that the Tenants moved out on May 19, 2019, and therefore, owe the Landlords 19 days of rent, which equates to $1,561.64; however, when I divide $2,500.00 by 31 days, it equals $80.65 per day - times 19 days - equals $1,532.35.

The Agents said that the Tenants did not pay rent for April or May 2019, whereas they were required to pay rent for one of the remaining two months of the tenancy.

The Tenants argued that the Two Month Notice was invalid. They have applied for compensation in this regard in a separate application.

#10 SEWER "EMERGENCY" - $307.12

The Agents said that the Tenants complained that the sewer was backing up and that a plumber was needed immediately. The Agents submitted a plumber's invoice which states that he arrived to find no sewer backing up at all. The plumber said he performed flush tests on the sanitary sewer and still could not make it back up. The plumber gave more details of the tests that were conducted and said:

> Indication and evidence found that there was no sewer backup at all. It appears that the problem was simply a plugged toilet. Its obvious the sewer was cleaned, and the roots cut back by the City and [plumbing company].

The plumber charged the Landlord $307.12 for this service call and the Landlord argue that the Tenants should pay for it, because the Landlord said it was unnecessary.

The Tenants said that they contacted the Landlord to inform them that there were ongoing issues with the plumbing. The Tenants said: “The toilet in the basement and occasionally upstairs would back up and no amount of plunging would help. The bowl would fill and over flow water, like a water fountain, and would continue even after the water supply valve was turned off (so no fresh water was coming in).” They went on to say that they did not tell the Landlords that it was an “emergency” and did not ask for a plumber to attend. The Tenants said they, “…merely informed Landlord and took a picture of the sump area with feces and toilet paper floating in it so the Landlord could make their own decision on what to do.”

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

In each hearing, I explained to the Parties how I would be analyzing the evidence presented to me. I said that the party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenants violated the Act*,* regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

“Test”

As set out in Policy Guideline #16 (“PG #16”), “The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due.”

Pursuant to sections 23 and 35 of the Act, a landlord must complete a CIR at both the start and the end of a tenancy, in order to establish that the damage occurred as a result of the tenancy. If the landlord fails to complete a move-in or move-out inspection and CIR, they extinguish their right to claim against either the security or pet damage deposit for damage to the rental unit, in accordance with sections 24 and 36 of the Act.

Further, a landlord is required by section 24(2)(c) to complete a CIR and give the tenant a copy in accordance with the regulations.

The undisputed evidence before me is that the Landlord did a condition inspection with the Tenant approximately three months after the tenancy started.

The photographs and documentation that the Landlord submitted for this hearing provide evidence of the rental unit at the end of the tenancy; however, the Landlord did not go to similar lengths to document the condition of the rental unit at the beginning of the tenancy. I have had to rely on the Tenants' photographs of the rental unit at the start of the tenancy for comparison, although, there is nowhere near the detail and close-up photos of the condition of the rental unit at the start in the Tenants' photographs.

#1 FIXING WALLS AND PAINTING - $5,132.63

I find the Agents' rate of $35.00 per hour for repairs on the residential property to be excessive, given that there is no evidence before me that the Agent, M.Y., who did the work is a professional painter or contractor. A more standard rate for this circumstance is $25.00 per hour. This reflects that a non-professional is more likely to be slower than a professional painter or contractor. Accordingly, I find it fair to reduce the rate billed to $25.00 per hour.

In terms of the Landlord's photographs of the "damaged walls", I reviewed the photographs and find that approximately half of the holes amount to "normal wear and tear" under the Act.

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear, from hanging decorations on the wall.

Policy Guideline #1 ("PG #1") helps interpret these sections of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher

> standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
>
> Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.
>
> [emphasis added]

In terms of the Tenants' evidence regarding the large hole in the wall at the bottom of the stairs in the Landlords' photographs, the Tenants provided a photograph of a hole in the wall on the other side, near the top of the stairs. Accordingly, I find that the Parties are addressing different holes in the walls. I find that the hole in the Landlord's photograph shows damage that is more than normal wear and tear, which is addressed by my award to the Landlord in this category.

The Agents gave reasonable means of calculating the hours it took to work on the property, so I accept that it was 120 hours. The Agents provided insufficient evidence of materials costs, so I do not award them anything in this regard. I award the Landlord recovery of **$3,000.00** in costs for this claim for 120 hours at $25.00 per hour.

#2 CARPET CLEANING AND REPLACEMENT - $4,566.26

Based on the Tenants' evidence of the previous RTB Orders for the Landlords to replace the carpets at their own expense, I find the Landlord's claim in this regard to be disingenuous, and I find it reduces the Landlord's and Agents' credibility. Accordingly, I dismiss this claim without leave to reapply.

#3 REPLACE WASHING MACHINE - $772.90

The burden of proof is on the Landlord in this situation to establish that the Tenants damaged the appliance, pursuant to the Test. The text messaging evidence indicates that the washer was broken prior to the start of the tenancy. The Landlord did not submit sufficient evidence to establish that they tried to have it repaired for the Tenants. The Tenants' evidence is that they offered to remove the washer for the Landlords with

the Tenants' van; however, there is insufficient evidence before me of a response to this offer.

Further, the Agents made vague reference to replacing "like with like" machines in replacing the damaged appliance. However, I find that the Agents provided insufficient evidence of the value of the initial washer or that it was worth anywhere near $772.90. In addition, the Agents provided insufficient evidence that their washing machine worked properly prior to the tenancy staring and that the damage was caused by the Tenants.

When I consider the evidence before me on this matter overall, I find that the Landlord has not established any of the steps of the Test for this item. I, therefore, dismiss this claim without leave to reapply.

#4 FIX VARIOUS DAMAGE - $290.00

The purpose of doing a move-in CIR is to set a baseline of the condition of the unit prior to the tenancy starting. I find that the Landlord did not follow the Act in conducting a condition inspection at the start of the tenancy, but did it three months into the tenancy. Further, the Tenant's undisputed evidence is that the Agent conducting this inspection neglected to go into the rooms to inspect the items the Landlord now claims as having been damaged during the tenancy. Based on the evidence before me overall, I find that the Landlord failed to conduct a condition inspection that is consistent with the Act and Regulation.

Section 14 of the Residential Tenancy Regulation states:

> **14** The landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act *[condition inspections]* when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time.

In addition, section 18 of the Regulation says that a landlord must give a tenant a copy of the signed CIR "…within 7 days after the condition inspection is completed". It also says that a landlord must use a service method described in section 88 of the Act to provide the tenant with a copy of the signed CIR. Section 24(2)(c) of the Act states that a landlord's right to claim against a security deposit or a pet damage deposit for damage to the residential property is extinguished if the landlord "does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations."

Based on the evidence before me overall, including the photographs that the Parties submitted, I find that the CIR is not a reliable indication of the condition of the rental unit at the start of the tenancy. Therefore, I find it should not be used to support the Landlord's grounds for claiming damages. The Landlord may still make a claim for compensation for damage, but I find that she has extinguished her right to make a claim against the security and pet damage deposits.

The Agents said that they **estimated** the cost of the damage in the items noted in this category. The damage has not been repaired, therefore, the Tenant is asked to compensate the Landlord for something that the Landlord has not incurred. I find that the Landlord has failed steps two and three of the Test in not having established the value of the damage incurred by the Landlord.

Further, the Tenant's testimony contradicts that of the Landlord in terms of the items being damaged during the tenancy. I find it more likely than not that the Tenant's explanation for the damage to the tile is more reliable than is the Landlord's vague claim. The Tenant's photographs of the missing baseboards at the start of the tenancy raises questions in my mind about the reliability of the Landlord's claim. The Landlord argued that there were random pieces of baseboard left after the tenancy ended, which is consistent with the Tenants' testimony that they scavenged for baseboards to be installed in the rental unit. Further, this is consistent with my previous finding of the Landlord's reduced credibility, given the inconsistency of her claims in the face of previous Decisions and Orders of the RTB.

Based on the evidence before me overall, I find that the Landlord has not provided sufficient evidence to support her claim in this category. Therefore, I dismiss this claim for $290.00 without leave to reapply.

#5 REPLACE LIGHTBULBS AND FIXTURES - $215.36

According to PG #1, tenants are responsible for replacing standard fuses and light bulbs in the rental unit during the tenancy. Tenants are also responsible for "making sure all fuses are working when he or she moves out, except when there is a problem with the electrical system." The Policy Guideline does not say that a tenant is responsible for making sure that all lightbulbs are working when he or she moves out. As such, I find that the Tenants were not responsible for replacing any burned-out lightbulbs in this situation. However, the Tenants acknowledged having removed the Landlords halogen bulbs in a light fixture and replacing them with their own energy-saving bulbs. I find it

reasonable that the Tenants should have returned the Landlord's original bulbs in the fixture when they removed their own expensive bulbs.

However, given that the Landlord did not submit receipts for the remaining items, evidencing the value of the loss they say they incurred, I find that the Landlord has not provided sufficient evidence of all of the steps in the Test. Accordingly, I dismiss this category of claims without leave to reapply.

#6 REPLACE DAMAGED ITEMS - $874.64

Based on the evidence before me, overall, I find the Tenants' evidence to be more credible than that of the Agents. The exterior photographs of the residential property demonstrate that the blind was damaged prior to the tenancy beginning. I find that this again raises questions in my mind about the Landlord's and Agents' credibility in their claim. I find it is more likely than not that the Tenants are being truthful in their denial of having caused the damage claimed by the Landlord in this category. Accordingly, I dismiss the Landlord's claim for $874.64 without leave to reapply on these matters.

#7 REPLACE LOCKS & KEYS - $110.37

PG #1, under the heading "Security" states the following about locks and keys:

5. If the tenant requests that the locks be changed at the beginning of a new tenancy, the landlord is responsible for re-keying or otherwise changing the locks so that the keys issued to previous tenants do not give access to the residential premises. The landlord is required to pay for any costs associated with changing the locks in this circumstance. The landlord may refuse to change the locks if the landlord had already done so after the previous tenant vacated the rental premises.

6. The landlord is responsible for providing and maintaining adequate locks or locking devices on all exterior doors and windows of a residential premises provided however that where such locks or locking devices are damaged by the actions of the tenant or a person permitted on the premises by the tenant, then the tenant shall be responsible for the cost of repairs.

Based on the evidence before me in this matter and PG #1, I find that the Landlord has not established on a balance of probabilities that the Tenants did not leave the keys at

the end of the tenancy or that it is the Tenants' responsibility to pay for a change of locks at the end of the tenancy. As such, I dismiss this claim without leave to reapply.

#8 RESTORE GARDENS, REMOVE GARBAGE - $1,459.50

PG #1 addresses parties' responsibilities involving landscaping, as follows:

> **PROPERTY MAINTENANCE**
>
> 1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.
>
> 2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.
>
> 3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

I find from the photographic evidence before me that the Tenants made considerable changes to the residential property that they were responsible for returning to the original state, unless they had written authorization from the Landlord to leave it in this condition. Accordingly, I find that the Tenants are responsible for returning the residential property landscaping to the original state prior to the tenancy.

I find from their photographs that the Tenants did a good job cleaning up the interior of the rental unit when they moved out. I find it more likely than not that they would be similarly responsible with the garbage left outside, if they had caused it to be there in the first place. Based on this and my questions about the Landlord's credibility, I find that the Tenants are not responsible for the garbage left at the residential property.

On the receipt, the Landlord's contractor did not break down the hours and cost per hour that they charged. At a reasonable rate of $25.00 per hour, this would amount to 21 hours of work between the two categories. This would mean the contractor took 15 hours to remove the garbage, although there would probably have been a dump fee for this, as well; however, that amount was not broken down on the receipt and the Agents did not provide this information. However, since I have found that the Tenants were not

responsible for cleaning up the garbage left on the property, the contractor's garbage removal charge is irrelevant.

With regard to the landscaping work done, it would have taken the contractor six hours to mow the lawn and clean overgrown shrubs at $25.00 per hour. There is no reference to removing boulders from the property; therefore, I find it more likely than not that the Landlord chose to leave the Tenants' changes in this regard in place. As noted in point 1. above from PG #1, a tenant is responsible for "routine yard maintenance, which includes cutting grass". Therefore, I find that the Landlord's claim for compensation for lawn mowing and trimming shrubs is reasonable in principle.

The Agents did not indicate how they found this contractor or that they attempted to find a more reasonable quote from other contractors. Given the evidence before me overall, including the contractor's description of what landscaping he did, I find it is reasonable that this amount of work would take approximately three hours, not six. Therefore, I award the Landlord **$75.00** for returning the garden to its pre-Tenant condition.

#9 19 DAYS RENT OWING - $1,561.64

The Agents said that the Tenants moved out on May 19, 2019, and therefore, owe the Landlords 19 days of rent, which equates to $1,561.64. When I divide $2,500.00 by 31 days, it equals $80.65 times 19 days equals $1,532.35. I find the Landlord has overstated their claim in this regard by $29.29.

The Tenants have applied for dispute resolution to claim that the Two Month Notice is invalid; however, that is not before me in this proceeding and has not been determined yet. Further, the Tenants did not explain the relevance of that to paying rent when it is due, and the Tenants did not sufficiently explain why they did not pay this rent in May. As a result, I award the Landlord **$1,532.35** in unpaid rent.

#10 SEWER "EMERGENCY" - $307.12

The Landlord has the burden of proving on a balance of probabilities that the Tenants are responsible for any damage or cost the Landlord is claiming. The Landlord must provide evidence to establish that compensation is due.

In the invoice, the plumber mentioned that the toilet was plugged, which is consistent with what the Tenants said they told the Landlord. I find it more likely than not that the toilet(s) was plugged and that the Tenants reported this to the Landlord or Agents. I find

that the Landlord has not provided sufficient evidence to establish that the Tenants caused the damage "either deliberately or as a result of neglect". As a result, I dismiss this claim without leave to reapply.

Summary/Off Set

	Claim	Amount
1	Fixing Walls & Painting	$3,000.00
2	Restore Gardens, Remove Garbage	$75.00
3	Unpaid Rent	$1532.34
4	Recovery of Application filing fee	$100.00
	Sub-total	$4,707.34
	Less security & pet damage deposits	(1,650.00)
	Total monetary order claim	**$3,057.34**

I find that this claim meets the criteria under section 72(2)(b) of the Act to be off set against the Tenants' security and pet damage deposits of $1,650.00 in partial satisfaction of the Landlord's monetary claim.

I grant the Landlord a monetary order pursuant to section 67 of the Act for the balance owing by the Tenants to the Landlord in the amount of **$3,057.34**.

Conclusion

The Landlord's claim for compensation for damage or loss against the Tenants is successful.

The Landlord has established a monetary claim of $4,607.34. I authorize the Landlord to retain the Tenant's full security and pet damage deposits of $1,650.00 in partial satisfaction of the claim. The Landlord has been granted a monetary order under section 67 for the balance due by the Tenants to the Landlord in the amount of **$3,057.34**.

This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 25, 2019

Residential Tenancy Branch